


SO ORDERED.

SIGNED this 24th day of April, 2019.




LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re)	
)	
ASCO Liquidating Company,)	Case No. 18-50018
)	
Debtor)	
_____)	

**ORDER APPROVING INTERIM AND FINAL APPLICATION FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES OF KANE RUSSELL COLEMAN LOGAN
PC AS COUNSEL FOR THE OFFICIAL UNSECURED CREDITORS' COMMITTEE
(Interim Period October 1, 2018 through November 29, 2018)
(Final Period January 28, 2018 through November 29, 2018)**

THIS MATTER came before the court on March 6, 2019, upon the Amended Third and Final Application by Kane Russell Coleman Logan PC as Counsel for the Official Unsecured Creditors' Committee for Allowance of Compensation and Reimbursement of Expenses for the Period October 1, 2018 through November 29, 2018 and Allowance of Final Compensation and Expenses (Docket No. 642) ("Final Application") filed on February 5, 2019.

Appearing at the hearing on March 6, 2019 were Ashley S. Rusher, counsel for Debtor, Robert E. Price, counsel for the United States Bankruptcy Administrator for the Middle District of North Carolina, and John R. Van Swearingen, local counsel to the Committee. Joseph M. Coleman of Kane Russell appeared by telephone.

The Final Application requests approval for interim fees and expenses for the period October 1, 2018 through November 29, 2018 in the amounts of \$23,028.00 and \$9,028.74, respectively. In addition, the Final Application requests approval on a final basis of total compensation of \$359,405.19, comprised of the above two amounts in addition to \$314,800.00 in fees and \$12,548.45 in expenses for the period January 24, 2018 through September 30, 2018.

On February 28, 2019 the Bankruptcy Administrator ("BA") filed an Objection to the Amended Final Fee Application of Kane Russell ("Objection") on two grounds: (1) five time entries designated by the BA as clerical/overhead in nature or duplicative/unnecessary for a total

reduction in the fees requested of \$797.00 and (2) the expense for “On-line Services” as vague and unnecessary under the circumstances of the case, one entry for \$1,983.88 on 10/31/2018 and one entry for \$5,390.86 on 11/30/2018. The BA recommended a reduction in expenses of \$7,374.74. At the hearing, the BA announced that Kane Russell agreed to the fee reduction of \$797.00 for the clerical and unnecessary time and to an allowance of \$4,544.74 as a negotiated reduction in the expense for online services.

Having considered the Final Application, the court finds as follows:

1. Auto Supply Company, Inc. filed its voluntary petition for relief under chapter 11 on January 8, 2018. The Committee selected Kane Russell as its counsel effective January 24, 2018 and filed its Application to Employ Kane Russell as counsel to the Committee (“Application to Employ”) on February 2, 2018. Following a hearing on February 14, 2018, at which time Kane Russell clarified it was to be employed under 11 U.S.C. § 327, and not under § 328 as stated in the Application to Employ, the court entered an order approving the employment of Kane Russell.
2. Paragraph 11 of the Application to Employ sets forth the usual and customary rates of the individuals Kane Russell expected to be involved in the case. Paragraph 12 of the Application to Employ states that Kane Russell also requires reimbursement for actual, necessary expenses incurred in representing the Committee, listing twelve types of expenses it believes to be fair to charge to clients. Online services is not included in the list of expenses as one of the expenses “typically charged to clients.” (Docket No. 160, ¶ 12.)
3. Kane Russell filed four applications for compensation in this case. The initial application, filed on April 20, 2018 for the period January 24, 2018 through March 31, 2018, requested fees of \$119,161.50 and expenses of \$3,697.15. On May 22, 2018 the BA and Kane Russell filed a Notice of Agreed Reduction in Fee Request, stating that the fees should be reduced by \$2,362.00 due to intra office conferences and overhead activities which are not compensable. After a further agreed reduction of certain fees, the court entered an order granting the initial application on an interim basis with a reduction in total fees of \$3,217.00, thus awarding compensation and reimbursement of expenses pursuant to the initial application on an interim basis in the total amount of \$119,641.65. This interim award was subject to the court’s final review and approval. This application included two entries for online services, \$133.20 on January 31, 2018 and \$1,168.87 on March 31, 2018; no reduction in the total compensation awarded was taken for this amount.
4. On July 20, 2018, Kane Russell filed a quarterly interim application for the period of April 1, 2018 through June 30, 2018. This application requested fees of \$105,578.00 and expenses of \$3,076.95, including \$885.21 for online services on April 30, 2018 and \$756.53 for online services on June 30, 2018. The BA filed a Notice of Agreed Fee Reduction by Kane Russell on August 24, 2018 in the amount of \$1,615.00. This notice identifies various time entries constituting clerical or duplicative work but does not reference the online services expense items. The clerk’s office entered an interim

fee approval memorandum on September 18, 2018 directing the debtor in possession to make payment to Kane Russell in the agreed reduced amount for the period April 1, 2018 through June 30, 2018.

5. Kane Russell filed a second quarterly interim application on October 22, 2018 for the period July 1, 2018 through September 30, 2018. This application requested fees of \$96,532.00 and expenses of \$8,242.49, including online services of \$1,917.84 on July 31, 2018, \$1,620.91 on August 31, 2018, and \$1,397.53 on September 30, 2018 for a total of \$4,936.28. The BA filed a Notice of Agreed Fee Reduction on December 13, 2018 reflecting an agreement to reduce the application by \$1,639.50 in fees for clerical, overbilling, and travel issues. The agreed fee reduction compromised on the online services expense items by reducing it to one-half the requested amount, \$2,468.14. The clerk's office entered an interim fee approval memorandum on January 10, 2019 directing the debtor in possession to make payment to Kane Russell in this reduced amount (for both fees and expenses) for the period July 1, 2018 through September 30, 2018.
6. The Final Application requests expense reimbursement for a final quarter of online services in the total amount of \$7,374.74, \$1,983.88 on October 31, 2018 and \$5,390.86 on November 30, 2018. For the pendency of Kane Russell's employment in this case, it has requested reimbursement for a total of \$15,254.83 for online services in the four applications for compensation, January 24, 2018 to November 29, 2018. Thus far, on an interim or conditional approval basis, Kane Russell has been paid \$5,411.95 by the debtor in possession for this expense.
7. At the hearing on the Final Application, the BA argued that the cost of online services is, as a general rule, part of a law firm's overhead unless there was some unique or unusual issue that requires research. In response, Kane Russell gave three reasons for why such expense should be reimbursed: (1) this expense is charged to clients in other cases, (2) the research was very important to the Committee's constituency, some of which was in the category of unique and difficult as it involved Article III of the UCC, and (3) a prohibition against requesting reimbursement for online services was not in the BA fee application guidelines for chapter 11 cases.
8. "The determination of what is reasonable compensation for actual, necessary services and what are actual, necessary expenses for purposes of reimbursement is within the sound discretion of the bankruptcy court." *In re Leonard Jed Co.*, 103 B.R. 706, 711 (Bankr. D. Md. 1989) (citing *In re AOV Industries, Inc.*, 43 B.R. 468 (D.D.C. 1984)). The burden of proof for reasonableness of compensation and for the necessity of actual services and expenses to be reimbursed is on the applicant who seeks payment from the bankruptcy estate. *Id.* Moreover, the court may reexamine and adjust interim allowances of administrative expenses previously allowed during the pendency of a case.
9. Some courts flatly disallow online legal research expenses under § 330. *In re King*, 546 B.R. 682, 734 (Bankr. S.D. Tex. 2016) (allowing charges for online legal

research would represent double-billing, as such amounts are factored into the hourly rates of the professionals); *In re Digerati Technologies, Inc.*, 537 B.R. 317, 364 (Bankr. S.D. Tex. 2015) (finding online legal research as a cost that is “reflected in an attorney’s billing rate and is therefore subsumed into attorneys’ fees.”); *In re Bob’s Supermarkets, Inc.*, 146 B.R. 20, 23 (Bankr. D. Mont. 1992) (finding Lexis charges akin to overhead and the costs of maintaining a library); *In re Bicoastal Corp.*, 121 B.R. 656 (Bankr. M.D. Fla. 1990) (“[T]o accept the proposition that Lexis charges or any other computer research charges are compensable, one should also then conclude that the cost of acquisition of the lawyer’s library and the cost of maintaining the library . . . would be compensable.”). *But see In re Hillsborough Holdings Corp.*, 127 F.3d 1398, 1404 (11th Cir. 1997) (reversing the bankruptcy court’s decision at the outset of the case that several categories of expenses including legal research were non-compensable because they were overhead costs, without considering evidence as to the usual billing practices of the attorneys involved or those of other comparable attorneys).

10. Other courts have found that online research expenses may be reimbursable under limited circumstances. *In re Cmty. Home Fin. Servs, Inc.*, No. 1201703EE, 2015 WL 6511183, at *28 (Bankr. S.D. Miss. Oct. 27, 2015); *In re McKenzie*, 460 B.R. 181, 187 (Bankr. E.D. Tenn. 2011); *In re Fibermark, Inc.*, No. 04-10463, 2004 WL 2418317, at *5 (Bankr. D. Ver. Oct. 22, 2004); *In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13, 32 (Bankr. S.D.N.Y. 1991); *Leonard Jed Co.*, 103 B.R. at 712. In *Fibermark*, the court crafted a three part standard that requires the applicant to (1) show the use charges incurred were reasonable and necessary (including a description of the research topic and the length of time spent on each topic); (2) affirm that the applicant bills its non-bankruptcy clients for computer assisted legal research, including the rate at which it bills such clients; and (3) certify the invoiced cost from the vendor. *Fibermark*, 2004 WL 2418317, at *5. The court in *Community Home* specifically adopted the *Fibermark* three-part standard. *Community Home*, 2015 WL 6511183, at *28. In *McKenzie*, the court considered whether (1) the expense was actually incurred; (2) the applicant customarily charges its clients separately for such research; and (3) the amount of the charges is reasonable. In support of the application in *McKenzie*, the applicant testified as to how the firm charged its clients for computer assisted legal research. 460 B.R. at 186.
11. In this instance, Kane Russell’s request for reimbursement of online research services must be disallowed. As a preliminary matter, Kane Russell’s Application to Employ identifies 12 types of expenses for which it might seek reimbursement, and its list of expenses does not include online research services.
12. Further, this court agrees with courts that find online legal research expenses to be part of a law firm’s overhead. And even if the court were to employ the more liberal approach, allowing reimbursement for online research services in limited circumstances, Kane Russell’s request does not qualify. The Application to Employ does not identify online service charges as an expense typically charged to clients. Also, Kane Russell included a charge for online services eight of the eleven months

the firm was employed as counsel for the Committee: \$133.20 on January 31, 2018; \$1,168.87 on March 31, 2018; \$885.21 on April 30, 2018; \$756.53 on June 30, 2018; \$1,917.84 on July 31, 2018; \$1,620.91 on August 31, 2018; \$1,983.88 on October 31, 2018; and \$5,390.86 on November 30, 2018. There were no explanations for these monthly lump sum amounts. Courts regard such lack of information regarding the computer assisted legal research expense to be determinative of its disallowance. *In re Computer Learning Centers, Inc.*, 285 B.R. 191, 234 (Bankr. E.D. Va. 2002) (“A lump sum that covers an entire month and does not indicate the topics or issues researched is insufficient.”); *see also In re Underground Energy, Inc.*, No. 9:13-bk-10563-PC, 2015 WL 222476, at *10 (Bankr. C.D. Cal. Jan. 14, 2015) (“With respect to [applicant’s] request for reimbursement of \$3,028.35 in expenses incurred for ‘Research Database/Document Retrieval,’ the court assumes that the expense was incurred for computer assisted legal research but the [application] does not provide the court with any explanation of the cost nor concrete documentation establishing the necessity of the expense.”); *In re Wireless Telecommunications Inc.*, 449 B.R. 228, 238 (Bankr. M.D. Pa. 2011) (“[T]here is nothing on this record that explains in what manner the expense was calculated or suggests that other clients of the firm are billed in like manner ... and cannot be approved on this record.”). There was discussion at the hearing that some of the online service expense was in connection with unique or difficult research.¹ The court cannot locate any case law in which online research expenses were found to be allowable solely because the research was unusual, unique, or difficult. Further, Kane Russell made no distinction in its billing for online services between routine and unusual research.

13. As a result, the amounts for online services previously allowed by the court on conditional approval will be deducted from the fees and expenses awarded pursuant to the Final Application. In addition, a fee reduction of \$797.00² and an expense reduction of \$7,374.74 will be taken from the amount requested as the interim portion of October 1, 2018 through November 29, 2018 of the Final Application.

NOW THEREFORE, based upon the Final Application, IT IS ORDERED that pursuant to § 330 of the Bankruptcy Code the Final Application is hereby APPROVED, upon the terms set forth below:

¹ In his objection to the Final Application, the BA cited *Digerati Technologies, Inc.* and *Embotelladora Agral Regiomontana, S.A. de C.V. v. Sharp Capital, Inc.*, 952 F.Supp. 415, 418 (N.D. Tex. 1997) for the proposition that Kane Russell’s charges for online services should be disallowed as a cost that is reflected into an attorney’s billing rate and subsumed into attorney fees. Yet at the hearing, the BA suggested that Kane Russell be allowed one-half the requested amount because (1) the research was unusual, (2) the BA guidelines do not indicate whether online research is an allowable expense, and (3) the figure was negotiated. This argument is an anomaly in practice before this court; it is not the practice of attorneys to bill for online legal research in this district.

² The agreed fee reduction of \$797.00 is for certain time entries that the BA asserted as clerical/overhead or duplicative/unnecessary.

1. Kane Russell is allowed interim fees due for services rendered for the period October 1, 2018 through November 29, 2018 in the amount of \$22,231.00 and interim expenses of \$1,654.00.
2. The Liquidating Trustee is authorized to disburse to Kane Russell the amount of \$18,473.05 from the Liquidating Trust's funds to pay the interim approved fees and expenses (such amount being reduced by the disallowed prior On-line Services expense amounts).
3. Kane Russell is allowed final compensation for the period January 24, 2018 through November 29, 2018, in the amount of \$337,031.00 in fees and \$8,790.50 in expenses for a total amount of \$345,821.50.

END OF DOCUMENT

PARTIES TO BE SERVED

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18-50018 C-11

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